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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues

11 Against:

12 **JEFFREY DEAN FERGUSON**

13 204 Apple Tree Lane

14 Wakarusa, IN 46573

15 Applicant for Registered Nurse License

16 Respondent.

Case No. 2012-483

OAH Case No. 2012030013

DEFAULT DECISION AND ORDER

[Gov. Code, § 11520]

17 **FINDINGS OF FACT**

18 1. On or about March 13, 2012, Complainant Louise R. Bailey, M.Ed., RN, in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),
20 Department of Consumer Affairs, filed Statement of Issues No. 2012-483 against Jeffrey Dean
21 Ferguson ("Respondent") before the Board.

22 2. On or about November 15, 2010, the Board received an Application for Licensure by
23 Endorsement ("Application") from Respondent to obtain a Registered Nurse License. On or
24 about November 9, 2010, Respondent certified under penalty of perjury to the truthfulness of all
25 statements, answers, and representations in the application.

26 3. On or about March 14, 2011, the Board issued a letter denying Respondent's
27 Application. On or about March 30, 2011, Respondent appealed the Board's denial of his
28 application and requested a hearing.

1 4. On or about February 29, 2012, Lametric Lewis, an employee of the Department of
2 Justice, served by Certified and First Class Mail a copy of the Statement of Issues No. 2012-483,
3 Statement to Respondent, Request for Discovery, copies of Government Code sections 11507.5,
4 11507.6, and 11507.7, Respondent/Applicant's Notice of Designation of Counsel (two blank
5 copies), and Respondent/Applicant's Notice of Withdrawal of Request for Hearing (two blank
6 copies) to Respondent's address on the application form, which was and is: 204 Apple Tree
7 Lane, Wakarusa, IN, 46573. A true copy of the Statement of Issues is attached hereto, marked
8 Exhibit A, and incorporated herein by reference.

9 5. Service of the Statement of Issues was effective as a matter of law under the
10 provisions of Government Code section 11505, subdivision (c)

11 6. On or about March 10, 2012, Respondent submitted his signed and dated Respondent
12 / Applicant's Notice of Withdrawal of Request for Hearing.

13 7. Business and Professions Code section 118 states, in pertinent part:

14 (a) The withdrawal of an application for a license after it has been filed with a
15 board in the department shall not, unless the board has consented in writing to such
16 withdrawal, deprive the board of its authority to institute or continue a proceeding
against the applicant for the denial of the license upon any ground provided by law or
to enter an order denying the license upon any such ground.

17 8. Government Code section 11520 states, in pertinent part:

18 (a) If the respondent either fails to file a notice of defense or to appear at the
19 hearing, the agency may take action based upon the respondent's express admissions
or upon other evidence and affidavits may be used as evidence without any notice to
20 respondent; and where the burden of proof is on the respondent to establish that the
respondent is entitled to the agency action sought, the agency may act without taking
21 evidence.

22 9. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on
24 evidence on file herein, finds that the allegations, in Statement of Issues No. 2012-483 are true.

25 **DETERMINATION OF ISSUES**

26 1. Based on the foregoing findings of fact, Respondent Jeffrey Dean Ferguson has
27 subjected his application for a Registered Nurse License to denial.
28

2. Service of Statement of Issues No. 2012-483 and related documents was proper and in accordance with the law.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Registered Nursing is authorized to deny Respondent's application for licensure based upon the following violations alleged in the Statement of Issues:

a. Business and Professions Code sections 2761, subdivision (f), and 480, subdivisions (a)(1) – Respondent sustained several criminal convictions;

b. Business and Professions Code sections 2761, subdivision (f), 2762, subdivisions (b) and (c), and 480, subdivision (a)(3)(A) – Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to himself and the public and was convicted of a crime involving the consumption of alcohol; and

c. Business and Professions Code sections 2761, subdivision (a)(4) – Respondent sustained disciplinary action by the Indiana State Board of Nursing.

ORDER

IT IS SO ORDERED that the Application for Licensure by Endorsement for a Registered Nurse submitted by Jeffrey Dean Ferguson is **DENIED**.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

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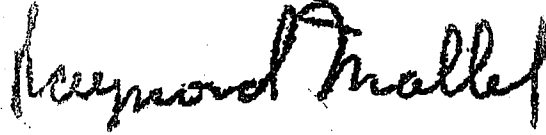
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1 This Decision shall become effective on DECEMBER 14, 2012.

2 It is so ORDERED NOVEMBER 16, 2012.

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6 FOR THE BOARD OF REGISTERED NURSING
7 DEPARTMENT OF CONSUMER AFFAIRS

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9 Attachments:

10 Exhibit A: Statement of Issues No. 2012-483

11 Exhibit B: Respondent/Applicant's Notice of Withdrawal
12 of Request for Hearing

Exhibit A

Statement of Issues No. 2012-483

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 LESLIE A. BURGERMYER
Deputy Attorney General
4 State Bar No. 117576
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5337
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
12 Against:

Case No. **202-483**

STATEMENT OF ISSUES

13 **JEFFREY DEAN FERGUSON**
204 Apple Tree Lane
14 Wakarusa, IN 46573

15 Applicant for Registered Nurse

16 Respondent.

17
18 Louise R. Bailey, M.Ed., RN ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this Statement of Issues solely in her official capacity as the
21 Interim Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs,
22 ("Board").

23 2. On or about November 15, 2010, the Board received an Application for Licensure by
24 Endorsement from Jeffrey Dean Ferguson ("Respondent"). On or about November 9, 2010,
25 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the application. The Board denied the application on March 14, 2011. On or
27 about March 30, 2011, Respondent appealed the denial of his application and requested a hearing.

28 ///

STATUTORY PROVISIONS

3. Code section 2736 provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under Code section 480.

4. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for the following:

(a) Unprofessional conduct which includes, but is not limited to, the following:

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

5. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

6. Code section 480 states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of

conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction of Crimes)

7: Respondent's application is subject to denial under Code sections 2761(f), and 480(a)(1), in that he was convicted of the following crimes that are substantially related to the qualifications, functions or duties of the license for which Respondent is applying:

a. On or about October 29, 2002, in the case of *People v. Jeffrey Dean Ferguson*, (Super. Ct. Orange County, 2002, Case No. 02HM08154), Respondent was convicted by the Court on his plea of guilty of violating Vehicle Code section 23152(a) (driving a vehicle while under the influence of drugs or alcohol), a misdemeanor. The circumstances of the crime were that on or about October 15, 2002, Respondent drove a motor vehicle with a blood alcohol level of .23%.

b. On or about June 17, 2006, in the case of *People v. Jeffrey Dean Ferguson*, (Super. Ct. Los Angeles County, 2006, Case No. 6CA18980), Respondent was convicted by the Court on his plea of no contest of violating Penal Code section 653(k) (possession of a switch blade knife having a blade two or more inches in length), a misdemeanor.

c. On or about March 15, 2007, in the case of *People v. Jeffrey Dean Ferguson*, (Super. Ct. Orange County, 2006, Case No. 06HM08043), Respondent was convicted by the Court on his plea of guilty of violating Penal Code section 594(a)/(b)(2)(A) (vandalism under \$400), a misdemeanor.

d. On or about March 14, 2007, in the case of *People v. Jeffrey Dean Ferguson*, (Super. Ct. Los Angeles County, 2006, Case No. 6CP07410), Respondent was convicted by the Court on his plea of nolo contendere of violating Vehicle Code section 23152(b) (driving a vehicle while having .08 percent or more by weight of alcohol in his blood), with a prior conviction of Vehicle

1 Code section 23152(a) (driving while under the influence of drugs and/or alcohol), on October
2 29, 2002, as set forth above in subdivision (a). The circumstances of the crime were that on or
3 about July 29, 2006, Respondent drove a motor vehicle with a blood alcohol level of .08% or
4 higher.

5 **SECOND CAUSE FOR DENIAL OF APPLICATION**

6 **(Committed Acts Which If Done By A Licentiate)**

7 8. Respondent's application is subject to denial under Code section 480(a)(3)(A), in that
8 he committed acts which if done by a licentiate of the profession would constitute grounds for
9 discipline, as more particularly set forth above in paragraph 7. Such conduct would constitute
10 grounds for discipline under Code sections 2761(f) (conviction of a crime substantially related to
11 the qualifications, functions or duties of a license holder). The conduct described in paragraphs
12 7.a and 7.d would constitute grounds for discipline under Code sections 2762(b) (used alcoholic
13 beverages to an extent or in a manner dangerous or injurious to himself and the public) and
14 2762(c) (convicted of a crime involving the consumption of alcohol).

15 **THIRD CAUSE FOR DENIAL OF APPLICATION**

16 **(Out-of-State Discipline)**

17 9. Respondent's application is subject to denial under Code section 2761(a)(4), in that in
18 or about June 2010, in a disciplinary proceeding titled *In the Matter of the License of: Jeffrey*
19 *Ferguson, R.N., License Number 28193431A*, the Indiana State Board of Nursing, Case No.
20 2010NB0149, issued probationary license number 28193431A to Respondent based on two
21 convictions of operating a vehicle while intoxicated in 2002 and 2007, as more particularly set
22 forth above in paragraphs 7.a and 7.d, and in **Exhibit A** attached hereto and incorporated herein
23 by reference.

24 **PRAYER**

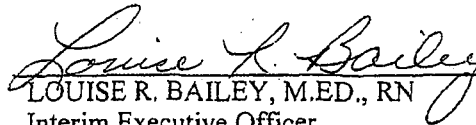
25 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Board of Registered Nursing issue a decision:

27 1. Denying the application of Jeffrey Dean Ferguson for a Registered Nurse License;
28 and,

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2. Taking such other and further action as deemed necessary and proper.

DATED: February 22, 2012


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
State of California
Complainant

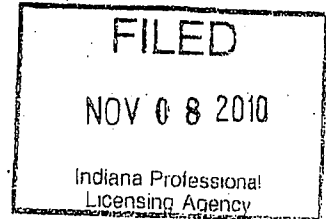
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EXHIBIT A

BEFORE THE INDIANA STATE
BOARD OF NURSING
CAUSE NUMBER: 2010 NB 0149

IN THE MATTER OF THE LICENSE OF:)
JEFFREY FERGUSON, R.N.,)
LICENSE NUMBER: 28193431A)



FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Indiana State Board of Nursing ("Board") held an administrative hearing on October 21, 2010, in the Auditorium of the Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana, concerning Jeffrey Ferguson's request to withdraw the probation from his license as a registered nurse.

Ferguson appeared in person and waived his right to be represented by counsel. Mark Mader, Deputy Attorney General, represented the State of Indiana.

The Board, after considering the evidence presented and taking official notice of the file in this matter votes 6 to 0 to issue the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Ferguson, whose mailing address is 204 Apple Tree Lane, Wakarusa, Indiana 46573, is a registered nurse with license number 28193431A.
2. Ferguson received timely and proper notice of the date, time, and location of this hearing pursuant to Ind. Code § 4-21.5-3-20.
3. The Board is empowered to hold this administrative hearing pursuant to the authority of Ind. Code § 25-1-9-9 and Ind. Code § 4-21.5-3.

4. The Board issued Ferguson's license on probation in June 2010 because he had been convicted of operating a vehicle while intoxicated in 2002 and 2007.

5. Ferguson asked that the probation on his license be withdrawn in September 2010.

6. At the hearing on withdrawal of probation, Ferguson testified that he has been in compliance with the terms of his probation. He was evaluated by the Indiana State Nurses Assistance Program ("ISNAP") and was found not to be a candidate for monitoring.

7. The deficiency that led to the probation on Ferguson's license involved past alcohol abuse. Ferguson's compliance with his probation constitutes evidence that the deficiency that required probation has been remedied.

CONCLUSIONS OF LAW

1. "The board may withdraw or modify the probation ... if it finds, after a hearing, that the deficiency that required disciplinary action has been remedied, or that changed circumstances warrant a modification of the order." Ind. Code § 25-1-9-9(b).

2. Ferguson's compliance with his probation constitutes evidence that the deficiency that required probation has been remedied.

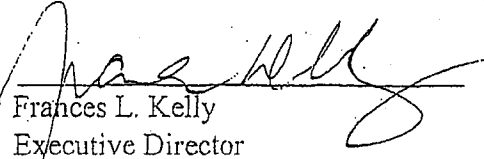
ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board WITHDRAWS the probation on Ferguson's license.

RECEIVED
2010 NOV 15 AM 11:50
BOARD OF
REGISTERED NURSING
SACRAMENTO

SO ORDERED, this 08 day of November 2010.

INDIANA STATE BOARD OF NURSING

By: 
Frances L. Kelly
Executive Director
Indiana Professional Licensing Agency

Copies to:

Jeffrey Ferguson, R.N.
204 Apple Tree Lane
Wakarusa, Indiana 46573

CERTIFIED MAIL NUMBER: 91 7190 0005 2720 0004 5451
RETURN RECEIPT REQUESTED

Mark Mader
Deputy Attorney General
302 West Washington Street
IGCS - 5th Floor
Indianapolis, Indiana 46204

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL

(Separate Mailings)

Case Name: **In the Matter of the Statement of Issues Against: Jeffrey Dean Ferguson**
Case No.: **2012-483**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On February 29, 2012, I served the attached **Statement of Issues; Statement to Respondent; Request for Discovery; Respondent/Applicant's Notice of Designation of Counsel; (2 Blank Copies); Respondent/Applicant's Notice of Withdrawal of Request for Hearing (2 Blank Copies); and Government code sections** by placing a true copy thereof enclosed in a sealed envelope as certified mail with return receipt requested, and another true copy of the **Statement of Issues; Statement to Respondent; Request for Discovery; Respondent/Applicant's Notice of Designation of Counsel; (2 Blank Copies); Respondent/Applicant's Notice of Withdrawal of Request for Hearing (2 Blank Copies); and Government code sections** was enclosed in a second sealed envelope as first class mail in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Jeffrey Dean Ferguson
204 Apple Tree Lane
Wakarusa, IN 46573

Certified Article Number

7196 9008 9111 4615 0187

SENDERS RECORD

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 29, 2012, at Sacramento, California.

Lametric Lewis
Declarant


Signature

7196 9008 9111 4615 0187

TO: Jeffrey Dean Ferguson
204 Apple Tree Lane
Wakarusa, IN 46573

SENDER: Leslie A. Burgermyer

REFERENCE: SA2011101238

PS Form 3800, January 2005

**RETURN
RECEIPT
SERVICE**

Postage

Certified Fee

Return Receipt Fee

Restricted Delivery

Total Postage & Fees

US Postal Service®

**Receipt for
Certified Mail™**

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

2. Article Number



7196 9008 9111 4615 0187

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Jeffrey Dean Ferguson
204 Apple Tree Lane
Wakarusa, IN 46573

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X

☐ Agent
☐ Addressee

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes
☐ No

SA2011101238

SOI Packet

Leslie A. Burgermyer

PS Form 3811, January 2005

Domestic Return Receipt

EXHIBIT B

Respondent's/Applicant's Notice of Withdrawal of Request for Hearing

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues

Against:

JEFFREY DEAN FERGUSON

204 Apple Tree Lane

Wakarusa, IN 46573

Applicant for Registered Nurse

Respondent.

Case No. 2012-483

**RESPONDENT / APPLICANT'S NOTICE
OF WITHDRAWAL OF REQUEST FOR
HEARING**

In accordance with California Code of Regulation, title 1, section 1014(c), a party withdrawing a request for hearing, shall immediately notify the Office of Administrative Hearings and all parties. I understand that a hearing will be held upon the charges made in the Statement of Issues unless I notify the Board of Registered Nursing that I do not want the hearing previously requested on the denial of my Registered Nurse License application.

IF YOU WISH TO WITHDRAW YOUR NOTICE OF DEFENSE OR REQUEST FOR A HEARING, PLEASE DO SO BY DATING AND SIGNING BELOW AND DELIVERING OR MAILING THIS FORM TO:

Leslie A. Burgermyer
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550

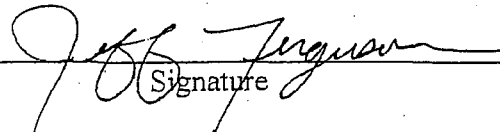
TO THE BOARD OF REGISTERED NURSING:

I, the undersigned Respondent in this proceeding, hereby acknowledge receipt of a copy of the Statement of Issues; the Statement to Respondent; Respondent/Applicant's Notice of Designation of Counsel (2 copies); Respondent/Applicant's Notice of Withdrawal of Request for Hearing (2 copies); Request for Discovery; and Discovery Statutes.

I withdraw my letter requesting a hearing.

3/10/12

Date



Signature

Jeff Ferguson

Print Name